



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

JRE
Docket No: 4184-00
18 December 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

As a preliminary matter, the Board rejected your contention that you discovered the alleged error or injustice in your case on 1 October 1999. It noted that you have been aware of the operative facts of your case since 31 May 1979, when you were released from active duty in the Navy without entitlement to military disability benefits.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this regard, it noted that you were released from active duty in the Army on 17 November 1969. On 17 December 1969, the Veterans Administration (VA) awarded you a convalescent rating of 100% for residuals of wounds received during your Army enlistment. On 20 July 1970, the VA reduced your combined rating to 80%. You appealed that decision, and on 28 August 1970, the VA determined that you were "unemployable", and entitled to payment at the 100% rate. The Board questioned the validity of that decision because the residuals of your wounds, although affecting many areas of your body, produced only minimal functional impairment. You completed a Standard Form 93, Report of Medical History, on 17 September 1974, in connection with your application for a Navy commissioning program. Although you disclosed the fact that had received a rating of 80% from the VA, you did not disclose the finding of that you were unemployable, and receiving compensation at the 100% rate. In addition, you described your health as "Excellent" at that

time. Based on your representations and the results of physical examination, you were found physically qualified for enlistment on 17 September 1974 and 19 November 1974, pending review of a waiver request. You were found unfit for commissioning on 15 January 1975, based on a slight shortening of your right leg which required a 1.5" lift, and paralysis of a vocal cord; however, you obtained a waiver of those conditions, and were commissioned on 13 June 1975. A medical board conducted at your request on 3 June 1979 found you fit for duty. You were released from active duty on 31 May 1979, at the expiration of your active duty service commitment. You remained in the Naval Reserve until 1 November 1987, when you were discharged for lack of participation. On 13 June 1979, the VA restored your previous rating of 80%, but did not find you unemployable. The VA rationale is as follows:

"The Board recognized that this case is atypical. Although the veteran has significant disabilities, he was able to complete a tour of active duty nonetheless. However, it must be pointed out that his environment was somewhat sheltered. For this reason, his evaluations prior to entering his second period of active duty are continued."

The Board noted that a finding by the VA that a veteran is entitled to substantial disability compensation does not equate to a finding that he was unfit for military duty when released from active duty, which is a prerequisite to disability separation or retirement from the Armed Forces. In addition, it noted that VA ratings represent the **average impairment** in earning capacity resulting from diseases and injuries and their residuals in civilian occupations. The **actual impairment** of the veteran's earning capacity is immaterial, except in that limited number of cases where employability is an issue. Although, in the opinion of VA rating officials, you have met the criteria for a VA rating of 80% or higher continuously since 1969 (even though you were not entitled to VA compensation while on active duty in the Navy), your actual earning capacity was not significantly impaired for large portions of that time, and there is no basis for finding you unfit for military duty during the 1974-1979 period, or granting your request for disability retirement.

In view of the foregoing, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director